IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.105 OF 2005

M/s.K. Girdhlal ..Petitioner.

V/s.

Commissioner of Income-tax & Ors. ..Respondents.

Mr.S.J. Mehta for petitioner.

Mr.R.V.Desai, senior counsel with S.V.Bharucha for respondents.

CORAM : S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 27TH JANUARY, 2005.

P.C. :-

1. Heard learned counsel for the petitioner and the respondents.

2. Rule, returnable forthwith.

3. Rule is taken on board for final hearing at this stage.

4. The advocate on record for the revenue waives service.

5. Having considered the available material and all the aspects, we are of the view that the application made by the petitioner seeking extention under section 80HHC (2) (a) of the Income Tax Act, 1961 for realisation of outstanding export proceeds require reconsideration by the Commissioner of Income Tax, Mumbai City XVI, Mumbai. It is so because it is apparent from the particulars available on record that the payment has been received, though belatedly, from the concerned parties. The petitioner in the application is seeking extention under section 80 HHC (2) (a) of the Income Tax Act for realisation of outstanding export proceeds set out the grounds that (a) The South East Asian and Japanese Currency crisis, in its aftermath has resulted in erosion of fortunes leading to widespread defaults by businessmen there. In turn the jewellery and diamond trade across the world is unable to realize its dues and / or is saddled with goods returned by parties and faces a tremendous payment crisis; (b) Worldwide recession and general slackness in the demand for jewellery (and percolating to diamonds) for the last two and a half years; (c) Slow moving stocks piled over with customers abroad; (d) Difficulty in realization of sale proceeds by customers abroad; (e) Reduction in bank credit finance the world over and (f) Uncertain economic environment caused by general trade depression in most of the diamond consuming

countries. The Commissioner seems to have overstretched the matter by observing that the assessee ought to have established with evidence that he was unable to bring the convertible foreign exchange for the reasons beyond control. The assessee's grounds set out above suggest that it was beyond his control. We are of the view that the matter requires reconsideration by the Commissioner.

6. We, accordingly, set aside the order dated 12th March, 2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Mumbai City XVI, Mumbai to reconsider the petitioner's application dated 30th September, 1997 seeking extention under section 80 HHC (2) (a) of the Income Tax Act in accordance with law.

7. In the light of our above order, the Assistant Commissioner of Income Tax will decide the notice under section 148 of the Income Tax Act and pass the appropriate order on the objections raised by the assessee regarding reopening of the assessment.

8. Rule is made absolute in the aforesaid terms. However, there will be no order as to costs.

(S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)